उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 215 of 2003

APPELLANT Motilal, age 36 years, S/o Dasharam Khadiya, R/o Jogideepa, P.S. Bilaigarh, Distt. Raipur.

IN JAIL

VERSUS

RESPONDENT State of Chhattisgarh

Present:
Mr. R.K. Sharma, counsel for the appellant.
Mr. Arun Sao, GA for the State/respondent.

ORAL JUDGMENT

(6th September 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 30th September 2002 passed in S.T.No. 201/02 whereby learned I Additional Sessions Judge, Baloda Bazar has convicted the appellant under Sections 450 and 376(1) of the IPC and sentenced him to undergo R.I. for one year, pay a fine of Rs.500/- and to undergo R.I. for ten years, pay a fine of Rs.1,000/- and in default of payment of fine to undergo additional R.I. for six months and one year, respectively. All the sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that on 20.3.2002 at about 3-4 p.m. the prosecutrix, aged about 60 years, was alone

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in her house when the accused entered in an inebriated condition, threw her on the floor and committed rape upon her even after the resistance offered by the prosecutrix. Hearing the shouts of the prosecutrix her neighbour Kondibai as also her grand-daughter Dhanbai came there and saw the accused committing rape with the prosecutrix. After their arrival, the accused fled from the place of incident. Report of the incident was lodged on 24.3.2002 by the prosecutrix at Police Station Bilaigarh, Raipur. The prosecutrix was sent for medical examination to Community Health Center, Baloda Bazar where Dr. N. Bajpai (PW-6) examined her and gave her report of Ex.P/5. After completing investigation charge sheet was filed against the accused.

3. During trial the prosecution examined 8 witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and stated that the village is faction ridden and therefore, he has been implicated due to animosity. He pleaded innocence and false implication in the crime. However, learned trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned above.

4. Learned counsel for the appellant submits that from conduct of the prosecutrix it would be evident that she was a

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consenting party as she did not raise alarm at the time of incident and a false report was lodged against the accused only because the incident was witnessed by her grand-daughter Dhanbai (PW-3) and neighbour Kondibai (PW-4). He further argues that the report has been lodged with a delay of four days and there is no explanation for the same.

5. On the other hand, learned counsel for the State supporting the impugned judgment submits that conviction of the appellant is based on the version of the prosecutrix which is duly corroborated by the statements of eyewitnesses i.e. PW-3 Dhanbai and PW-4 Kondibai as also the statement of Dr. N. Bajpai (PW-6) who has examined her and found external and internal injuries on her private parts.

6. I have heard learned counsel for both the parties and perused the evidence available on record as also the impugned judgment.

7. PW-2 prosecutrix has stated in her deposition that her husband died some 10 years before, Kondibai resides in her neighbourhood and the name of her grand daughter is Dhanbai. Her son Jagdish had gone to Sarangarh to earn his livelihood. On the date of incident at about 4.00 p.m. she was alone in the house when the accused came there and they were involved in physical scuffle. He forcibly made her lie and thereafter rapped her. Hearing her shouts Kondibai came there

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and saw the accused committing rape, whereupon she also shouted. Thereafter, the appellant fled towards *Badi* (kitchen garden). In the meanwhile, grand daughter of the prosecutrix Dhanbai also came there and saw the accused committing rape. On being sent by the police, the prosecutrix was medically examined by the doctor. In the cross-examination she has stated that she unsuccessfully tried to resist. Though she has stated that she did not receive any injuries on her hand and leg during scuffle, but as per the injury report of Dr. N. Bajpai (PW-6) who examined her on 28.3.2003 it has been observed that there was superficial laceration on skin overlying lower part of sacrum and there was superficial laceration lateral to right labia minora, superficial laceration on forchetle. Apart from above injuries, she also sustained abrasion over crythema on center and healing at periphery was seen. She has further opined that the injuries present over private parts may be caused during intercourse within a period of one week. The statement of the prosecutrix is further corroborated by the statement of PW-3 Dhanbai, aged about 13 years, who has stated that her grand-mother Sukmat Bai was alone in her home, when she returned home she saw the accused committing rape with her grand-mother Her statement is further corroborated by the statement of Kondibai (PW-4), who has stated that at the time of incident Dhanbai came to her running and informed her that the accused was rapping the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

prosecutrix, whereupon she went to the place of incident and saw that accused was committing rape with the prosecutrix. In the cross-examination she has stated that Dhanbai told her that grand mother was calling her.

8. Thus, from the statements of the prosecutrix and other two witnesses as also the statement of the doctor, this court is of the considered opinion that prosecution has been able to establish that the appellant committed rape with the prosecutix against her wishes and the trial Court has not committed any illegality or infirmity in convicting the appellant under Sections 376(1) and 450 of the IPC.

9. Learned counsel for the appellant submits that the appellant has been convicted and sentenced to undergo R.I. for 10 years under Section 376(1) of the IPC, which his too excessive, therefore, looking to the facts and circumstances of the case, he may be sentenced to the period already undergone by him.

10. Taking into consideration the evidence available on record, conviction of the appellant under Sections 376(1) & 450 of the IPC is maintained. However, jail sentence of 10 years' R.I. imposed upon him under Section 376(1) of the IPC is reduced to seven years' R.I. Fine sentence shall remain as it is.

Sd/-
DHIRENDRA MISHRA
Judge

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